CHAPTER THREE

Pre-trial Motions

I. Defense Motions

A. Discovery (Sup. Ct. R. 3A:11) (BACIGAL at §§14–2 through 14–6).

Although there is no constitutional right to discovery in a criminal case, *Lowe v. Commonwealth*, 218 Va. 670, 239 S.E.2d 112 (1977), *cert. den.*, 435 U.S. 930 (1978), the Virginia Supreme Court Rules allow the defendant to obtain documents from the prosecution under certain circumstances. Va. Sup. Ct. R. 3A:11. Prosecutors must be aware that Rule 3A:11 applies only to felony prosecutions in Circuit Court, and that the defendant also may be able to obtain discovery if there is a preliminary hearing in juvenile and domestic relations district court, Va. Sup. Ct. R. 8:15, or if the victim has filed a civil suit. Va. Sup. Ct. R. 4:0–4:14. For cases involving adults charged with a crime in juvenile and domestic relations district court, see Rules of Gen. Dist. Ct. 7C:5.

1. Psychological/Psychiatric Records.

Supreme Court Rule 3A:11(b) (1) allows the accused to inspect "written reports of a physical or mental examination of the accused or the alleged victim made in connection with a particular case . . . that are known by the Commonwealth's attorney to be within the possession, custody or control of the Commonwealth." Further, the physician-patient privilege is not applicable in "any legal proceeding resulting from the filing of any report or complaint" related to child abuse or neglect. Va. Code Ann. §63.2–1519. Accordingly, statements made to a physician are not protected by privilege. *Barker v. Commonwealth*, 230 Va. 370, 337 S.E.2d 729, 734 (1985) (medical and psychiatric records of victim discoverable if in the possession and control of the Commonwealth's Attorney). However, the defendant must make a specific showing of relevance to obtain psychiatric records of a rape victim. *Farish v. Commonwealth*, 2 Va. App. 627, 346 S.E.2d 736 (1986). *See also O'Dell v. Commonwealth*, 234 Va. 672, 364 S.E.2d 491 (1988) (Commonwealth not required under Sup. Ct. R. 3A:11(b) to disclose information about its experts to the defendant even though defendant was required to furnish information about an expert because the Commonwealth was paying the costs due to defendant's indigence).

2. Physical Examination.

In *Clark v. Commonwealth*, 31 Va. App. 96, 521 S.E.2d 313 (1999), the Court of Appeals agreed with the defense that a trial court has the discretion to require the victim of an alleged sexual assault to submit to an independent physical examination where the defendant has made "a threshold showing of a compelling need or reason." *Id.* at 109, 521 S.E.2d at 320.

3. Juvenile Records

A defendant's right to confront witnesses outweighs a juvenile's embarrassment resulting from disclosure of juvenile records. *Davis v. Alaska*, 415 U.S. 308 (1974) (holding that a defendant's constitutional right to effective cross-examination of adverse witnesses outweighs

the witness's right to testify without the embarrassment of disclosing juvenile records when the state could refrain from calling the witness to testify). However, a defendant is not entitled to examine juvenile court documents of adverse witnesses when the Commonwealth provides a complete record of the juvenile's adjudication history and when bias, prejudice or ulterior motive are not asserted against the witness. *Scott v. Commonwealth*, 7 Va. App. 252, 262, 372 S.E.2d 771, 777 (1988). *See Fulcher v. Commonwealth*, 226 Va. 96, 306 S.E.2d 874 (1983) (harmless error in limiting cross-examination of witness's juvenile record under the unusual facts of the case); *McCain v. Commonwealth*, 5 Va. App. 81, 360 S.E.2d 854 (1987) (harmless error to limit cross-examination of a witness concerning his juvenile record). Juvenile records cannot be used for impeachment purposes simply as a record of a crime

4. Discovery of Other Documents

Va. Sup. Ct. R. 3A:11(b) (2) provides:

> Upon written motion of an accused, a court shall order the Commonwealth's attorney to permit the accused to inspect and copy or photograph designated books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, that are within the possession, custody, or control of the Commonwealth, *upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable*. (emphasis added).

Prosecutors should be aware of the following issues:

- The Commonwealth is not required to furnish the names and addresses of witnesses. *Lowe v. Commonwealth*, 218 Va. 670, 239 S.E.2d 112 (1977), *cert. den.*, 435 U.S. 930 (1978); *Watkins v. Commonwealth*, 229 Va. 469, 331 S.E.2d 422 (1985), *cert. den.*, 475 U.S. 1099 (1986).

- The defendant is not entitled to records that Child Protective Services has kept on the investigation. *Spencer v. Commonwealth*, No. 2207–01–2 (Va. Ct. App. Oct. 8, 2002) (unpublished) (the trial court did not err in denying the defense pretrial access to the CPS file, which included an audiotape and transcript of the interview with the victim).

- The defendant may obtain school records if the Commonwealth intends to introduce such records in its case-in-chief. Sup. Ct. R. 3A:11.

- The defendant may use a subpoena duces tecum to obtain writings or objects that are material to the proceeding even if they are not admissible. *Gibbs v. Commonwealth*, 16 Va. App. 697, 432 S.E.2d 514 (1993).

- The defendant may obtain the results of scientific tests, such as DNA tests. Va. Sup. Ct. R. 3A:11(b) (1) (ii).

- The defendant may obtain all relevant statements made by the defendant. Va. Sup. Ct. R. 3A:11(b) (1) (i). *See also Naulty v. Commonwealth*, 2 Va. App. 523, 346 S.E.2d 540 (1986) (only relevant statements by the defendant are subject to discovery).

Of importance is Rule 3A:12, which requires requested writings to be material to the proceeding. Prosecutors should move to quash requests for all documents until there has been a showing of materiality. Prosecutors may wish to request the court review records in camera, and the prosecutor also should move for copies of all records relevant to the defense to be provided to the Commonwealth.

5. Exculpatory Evidence

The Commonwealth must turn over all exculpatory evidence known to the Commonwealth. *Bellfield v. Commonwealth*, 215 Va. 303, 208 S.E.2d 771 (1974), *cert. denied*, 420 U.S. 965 (1975). Such evidence includes: i) statement favorable to the accused even if the Commonwealth considers the statement not credible, *Hughes v. Commonwealth*, 16 Va. App. 576, 431 S.E.2d 906 (1993); *Cherricks v. Commonwealth*, 11 Va. App. 96, 396 S.E.2d 397 (1990); ii) scientific and physical evidence, *Robinson v. Commonwealth*, 231 Va. 142, 341 S.E.2d 159 (1986) (a witness's failure to pass a polygraph test and the fact that the witness possibly had human blood on his clothes should have been provided by the prosecution in response to defendant's motion for exculpatory evidence); and iii) information in the possession of the police but not known to the prosecutor, *Conway v. Commonwealth*, 11 Va. App. 103, 397 S.E.2d 227 (1990). *See* MANUAL, Chapter Four, part II.B.2.d.

B. Other Defense Motions

1. Request for a Bill of Particulars (BACIGAL at §13–8).

One of the most popular defense motions is a request for a bill of particulars, in which the defendant attempts to force the prosecution into specifying a date for the occurrence. For discussion of this issue, see *supra*, Chapter Two, part II.A.

2. Motion for Continuance (Va. Sup. Ct. R. 7A:14) (BACIGAL at §17–3).

It is important that the defendant or the defendant's attorney consent on the record to a continuance. *Gilchrist v. Commonwealth*, 227 Va. 540, 317 S.E.2d 784 (1984). By consenting, the defendant waives the right to raise Speedy Trial Act questions at a later date. "[A] statute such as Virginia Code . . . §4926, designed to aid in the constitutional guarantee of a 'speedy trial' for one accused of crime, may be waived and is waived where the accused consents to a continuance or a postponement." *Flannery v. Commonwealth*, 35 S.E.2d 135, 139 (Va. 1945). For other issues relating to continuances, *see Bennett v. Commonwealth*, 236 Va. 448, 374 S.E.2d 303 (1988) (trial court's four-day continuance to allow the Commonwealth to respond to a surprise argument by the defendant not an abuse of discretion because defendant has no constitutional "right to surprise" the Commonwealth as a defense tactic); *Smith v. Commonwealth*, 16 Va. App. 630, 432 S.E.2d 2 (1993) (continuance for defendant not required when on morning of trial defendant wanted more time to test

blood sample submitted five months prior to trial for evidence of sexual activity of fourteen-year-old victim).

3. Severance Motions (BACIGAL at §§14–19 through 14–20).

   The Commonwealth must file a motion to try jointly "persons charged with participating in contemporaneous and related acts or occurrences or in a series of acts or occurrences constituting an offense or offenses." Va. Code Ann. §19.2–262.1. The court may order such a joint trial for good cause, provided it does not constitute prejudice to a defendant. *Id. See also* discussion *supra*, Chapter 2, part II.B.

4. Motion to Admit Evidence of Victim's Prior Sexual Conduct

   Virginia's rape shield statute makes evidence of a victim's prior sexual conduct inadmissible. Va. Code Ann. §18.2–67.7 ("In prosecutions [of criminal sexual assault cases], general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted."). *See Hoke v. Commonwealth*, 237 Va. 303, 377 S.E.2d 595 (1989) (evidence of victim's reputation held clearly inadmissible under rape shield statute). See MANUAL, Chapter Four, part III.D., for further discussion of this issue.

   The Virginia Supreme Court has determined that prior allegations of sexual abuse by a victim are admissible to impeach the credibility of the victim or to show that the present offense did not occur and that such evidence does not fall within the rape shield statute. *Clinebell v. Commonwealth*, 235 Va. 319, 325, 368 S.E.2d 263, 266 (1988). In *Clinebell*, the defendant was convicted of sexually assaulting his minor daughter. Prior to trial, the Commonwealth filed a motion in limine to have the trial court prohibit reference to any past sexual contact of the victim with any person other than the defendant. Specifically, the Commonwealth sought to prohibit any reference to the following statements allegedly made by the daughter: i) in 1983 she told a classmate she was pregnant; ii) in 1984 she told a classmate both her father and her uncle had raped her; iii) in 1984 she told a cousin that a boy had gotten her pregnant; and iv) she had claimed her paternal grandfather had sexually abused her (the grandfather was tried and acquitted of two charges of abuse). The defendant argued the purpose of the evidence was to prove the victim falsely claimed to have engaged in sexual conduct and to attack the victim's credibility. The Supreme Court held that the allegedly false "statements" concerning sexual behavior were not "conduct" within the meaning of Virginia's rape shield statute and were admissible to impeach the complaining witness's credibility. *Id.* at 322–°–23, 368 S.E.2d at 264–65. Further, the court held that specific acts of prior allegations are admissible as substantive evidence tending to show that the instant offense did not occur because "the weight of authority recognizes more liberal rules concerning impeachment of complaining witnesses" in sex abuse cases. *Id.* The one limitation on this rule is that the court must make a threshold determination that a reasonable probability of the falsity of the prior allegations exists. *Id.* at 326, 368 S.E.2d at 266. In this case, the court concluded that in light of her "obviously" false claims of pregnancy, a reasonable probability existed that her claims of sexual misconduct against her grandfather and uncle also were false. The court

believed that if the jury had been informed of her prior statements, it properly could have inferred that the father's alleged sexual acts with his daughter also were fabrications.

Likewise, in *Cairns v. Commonwealth*, 40 Va. App. 271, 579 S.E.2d 340 (2003), where a man was convicted of three counts of forcible sodomy, one count of rape and one count of producing sexually explicit material, all in connection with activities involving his fourteen–year–old stepdaughter and his eleven–year–old daughter, the Court of Appeals ruled that the trial judge erred in refusing to admit into evidence a journal kept by the older girl, because the journal was admissible as statements for specific impeachment purposes. The rape shield statute thus did not apply, but the error was harmless since the trial judge reviewed the journals and said their admission would not have influenced his decision. In a circuit court case, the judge ruled that there was no exception to the rape shield law that would allow cross-examination of a child sexual assault victim on her prior sexual experience, especially since that alleged prior experience was dissimilar to what was alleged in the case. *Commonwealth v. Hagy*, 41 Va. Cir. 51 (Roanoke City 1996).

5. Marital Privilege (FRIEND at §7-2; BACIGAL, TATE & GUERNSEY at 270–272).

The common law interspousal confidential communication privilege was not abrogated by the legislature's enactment of Va. Code Ann. §§19.2–271.2 and 8.01–398. *Church v. Commonwealth*, 230 Va. 208, 335 S.E.2d 823 (1985). At the time of the *Church* decision, section 19.2-271.2 stated:

> In criminal cases neither [husband nor wife] shall be compelled . . . to be called as a witness against the other, except in the case of a prosecution for an offense committed by one against the other or against a minor child of either . . . but if either be called and examined in any case as a witness in behalf of the other, the one so examined shall be deemed competent, and, *subject to the exception stated in §8.01–398*, may be compelled to testify against the other under the same rules of evidence governing other witnesses. (Emphasis added; the statute was last amended in 1996, subsequent to this case).

Va. Code Ann. §8.01–398, applicable on its face only to civil proceedings, stated:

> [N]either husband nor wife shall, without the consent of the other, be examined in any actions as to any communications privately made by one to the other while married, nor shall either be permitted, without such consent, to reveal in testimony after the marriage relation ceases any such communication made while the marriage subsisted.

The court held that the language "subject to the exception stated in §8.01-398" had the effect of retaining the repealed interspousal communication privilege within the criminal procedure statute. Thus, interspousal communications may not be compelled from a spouse under §19.2–271.2. See Appendix B for a current version of the text of the statute. Section 63.2–1519 of the Code abrogates the privilege in "any legal proceedings" resulting from a complaint or report of abuse or neglect.

6. Venue (BACIGAL at §14–21).

   Change of venue based on extensive media coverage of a case depends on i) whether the media coverage is "factual and accurate;" and ii) the difficulty in selecting a jury. *Mueller v. Commonwealth*, 244 Va. 386, 398–99, 422 S.E.2d 380, 388–89 (1992). In *Mueller*, there was no contention that the media coverage was false, and only nine of 47 venirepersons had to be dismissed because of a predisposition against the defendant. Therefore, a change of venue was not required. *See also Wood v. Commonwealth*, 146 Va. 296, 135 S.E. 895 (1926) (need for change of venue established when defendant shows that a fair trial is impossible due to conditions existing at the time of trial).

II. Prosecution Motions (*See* Daniel S. Armagh, "'Pre-trial Motions in Child Abuse Cases," 11 *Update*, No. 3 (1998)).

A. Discovery (BACIGAL at §14–6).

   If the defendant files a motion for discovery of prosecution records as provided by Rule 3A:11(b)(1)(ii) or (b)(2), the court must condition the defendant's discovery order on his providing to the prosecution: i) discovery of records or reports of "autopsy examinations, ballistic tests, fingerprint, blood, urine and breath analysis, and other scientific tests" within the defendant's control; ii) information about whether the accused intends to introduce an alibi defense; and iii) information about whether the defendant will assert an insanity defense. Va. Sup. Ct. R. 3A:11(c). The only other pre-trial information the Commonwealth may discover about defendant is that obtained from an HIV test; however, such information is not admissible at trial. Va. Code Ann. §18.2–62.

B. Prosecution Motions Concerning Prior Acts of the Defendant:

   Evidence of "other crimes and offenses at other times" is inadmissible to prove the defendant committed the crime for which he or she is being tried. *Kirkpatrick v. Commonwealth*, 211 Va. 269, 272, 176 S.E.2d 802, 805 (1970). However, other crime evidence is admissible to show:

   - the "conduct and feeling of the accused toward his victim;"
   - prior relations;
   - any relevant element of the offense charged;
   - motive, intent, or knowledge of the accused;
   - evidence that "leads up to the offense;" or
   - the other crimes are part of a general scheme or plan that includes the crime charged. *Id.*

   See also MANUAL, Chapter Four, part IV.

   1. Prior Acts Involving the Same Victim (FRIEND at §§12–14 through 12–16; BACIGAL, TATE & GUERNSEY at 258–264).

a. Sexual Abuse

Evidence of prior incestuous behavior by a defendant is admissible to show his or her predisposition toward incest. *Brown v. Commonwealth*, 208 Va. 512, 158 S.E.2d 663 (1968). In *Brown*, the court quoted the language of 27 AM. JUR., Incest §15, pp. 296–97:

> [I]t is well settled that in a prosecution for incest, evidence of acts of incestuous intercourse between the parties other than those charged in the indictment or information, whether prior to or subsequent thereto, is, if not too remote in point of time, admissible for the purpose of throwing light upon the relations of the parties and the incestuous disposition of the defendant toward the other party, and to corroborate the proof of the act relied upon for conviction. *Id.* at 516–17, 158 S.E.2d at 667.

See also Freeman v. Commonwealth, 223 Va. 301, 314, 288 S.E.2d 461, 467–68 (1982) (evidence that defendant had prior sexual contact with victim in child pornography prosecution admissible because it tended to prove that the pictures appealed to his prurient interest, which was an element of the offense); *Ryan v. Commonwealth*, 219 Va. 439, 247 S.E.2d 698 (1978) (evidence of defendant's attempted rape of victim three nights before the incident for which he was convicted admissible in defendant's trial for breaking and entering with intent to commit rape); *Herron v. Commonwealth*, 208 Va. 326, 327–28, 157 S.E.2d 195, 196–97 (1967) (evidence of prior intercourse between the defendant and victim of statutory rape admissible but must be limited to corroborating the victim's testimony and not as proof of guilt for the prior acts). In *Mangum v. Commonwealth*, No. 0761–02–2 (Va. App. Feb. 4, 2003), the Court of Appeals upheld the admission of prior sexual acts with the child victim for the limited purpose of showing defendant's inclination to commit the charged acts and in corroboration of the victim's testimony.

Double Jeopardy. Evidence of a prior conviction for rape of the same victim does not constitute double jeopardy. *Marshall v. Commonwealth*, 5 Va. App. 248, 361 S.E.2d 634 (1987). In April 1985 the defendant was indicted for rape of a child under the age of 14 years for conduct occurring within five and one-half years of the indictment. In May 1985 the defendant was convicted of rape of a minor under the age of 14 years for conduct occurring on March 3, 1985. During the trial of the April indictment, the victim's mother gave a detailed description of events she witnessed on March 3, for which defendant had already been convicted. After being convicted of the offenses set forth in the second indictment, the defendant argued that this conviction placed him in double jeopardy. The court first noted that evidence of prior acts generally is admissible in cases of incest or rape for the purpose of showing the defendant was disposed to such conduct. The court held that this raises double jeopardy problems only if it involves "the identical criminal act, not the same offense by name." *Id.* at 255, 361 S.E.2d at 638. Therefore, because the defendant was convicted for acts other than those occurring on March 3, 1985, he was

not placed in double jeopardy. However, the court stated that once such evidence is admitted, the trial court must give a clear instruction explaining to the jury the purpose for which the evidence is to be used. The court stated:

> The safeguard to a fair trial for a defendant who is confronted with properly admitted evidence of offenses for which he is not then being tried is in a clear and specific instruction . . . explaining the purpose for which the evidence is admitted and the limited consideration it may be given by the jury. *Id.* at 255, 361 S.E.2d at 639.

Because the judge's instruction in this case was inadequate, the court reversed the conviction.

b. Physical Abuse (FRIEND at §12–14; BACIGAL, TATE & GUERNSEY at 263–264).

Evidence of prior physical abuse of a victim is admissible "where motive, intent or knowledge of the accused is involved, or where the evidence is connected with or leads up to the offense for which the accused is on trial." *Evans v. Commonwealth*, 215 Va. 609, 614, 212 S.E.2d 268, 272 (1975). In *Evans*, the Supreme Court admitted evidence in a prosecution for second degree murder that the defendant previously had struck the victim. The court stated that the evidence of other beatings was relevant "to establish the intent to do serious bodily harm to the child, to show defendant's feelings toward [the victim], and to indicate a pattern of conduct which led to [the victim's] death." *Id.* at 614, 212 S.E.2d at 272. *See also Estelle v. McGuire*, 112 S. Ct. 475 (1991) (admission of prior injury evidence does not violate due process even though prior injuries not linked specifically to the defendant). *Cf. Smarr v. Commonwealth*, 219 Va. 168, 246 S.E.2d 892 (1978) (reversible error to admit hospital records of prior injuries of a child in prosecution for malicious wounding when the Commonwealth failed to show that the defendant caused the prior injuries).

2. Prior Acts Involving Different Victims (FRIEND at §12–14; BACIGAL, TATE & GUERNSEY at 263–264).

a. Sexual Abuse

Other acts evidence is admissible "if it shows the conduct or attitude of the accused toward his victim, establishes the relationship between the parties, or negates the possibility of accident or mistake." *Moore v. Commonwealth*, 222 Va. 72, 77, 278 S.E.2d 822, 825 (1981). In *Moore*, the defendant was convicted of indecent liberties for conduct occurring with a boy under the age of 14. The court allowed evidence that defendant fondled the victim and another boy several months after the incident for which the defendant was convicted. *Id. See also Hawks v. Commonwealth*, 228 Va. 244, 321 S.E.2d 650 (1984) (testimony of witnesses tending to show defendant's attempts to lure women into his vehicle to abduct and rape them relevant to corroborate testimony of victim and to contradict defendant's claim that victim had "flagged him down" and "jumped in his

pickup"); *Foster v. Commonwealth*, 6 Va. App. 313, 323, 369 S.E.2d 688, 694 (1988) (evidence of defendant's attempts to entice young girls to be photographed admissible to show his intent). *Cf. Day v. Commonwealth*, 196 Va. 907, 86 S.E.2d 23 (1955) (evidence of stalking by defendant of another victim earlier in the evening inadmissible for the purpose of showing defendant's state of mind to molest women); *White v. Commonwealth*, 9 Va. App. 366, 388 S.E.2d 645 (1990) and *Overruled on other grounds*, *Lavender v. Commonwealth*, Va. App. 1003, 407 S.E.2d, 910 (1991) (evidence that rapist used a knife in an attack of another victim the same night insufficient to show that the act was so unusual so as to act as a signature of the defendant). For the related issue of prior convictions, *see Chrisman v. Commonwealth*, 3 Va. App. 89, 348 S.E.2d 399 (1986) (prior convictions admissible to impeach the defendant's credibility only if the convictions demonstrate a lack of truth or veracity of defendant).

b. Physical Abuse (BACIGAL, TATE & GUERNSEY at 258).

Prior acts of abuse must be admitted for a proper purpose and not to show predisposition of defendant. *Hagy v. Commonwealth*, 222 Va. 599, 283 S.E.2d 187 (1981). In *Hagy*, the court held inadmissible evidence in a child homicide trial that the defendant had twisted the arm and feet of another child while in the defendant's care. The court held that the victim died of injuries completely unrelated to twisting arms or feet and that such evidence only had the improper purpose of showing that the defendant was disposed toward abusing children. *Id.* at 604, 283 S.E.2d at 190.

3. Computer Pornography.

In *Blaylock v. Commonwealth*, 26 Va. App. 579, 496 S.E.2d 97 (1998), the trial court erred in admitting into evidence pornographic images from Blaylock's computer involving children. This evidence of other and prior "bad acts" would have been relevant to prove intent but intent was not an issue in the case. Similarly, in *Staton v. Commonwealth*, No. 1362–01–4 (Va. Ct. App. Aug.6, 2002) (unpublished), defendant was convicted of ten counts of taking indecent liberties with a child, two counts of aggravated sexual battery and object sexual penetration, all with a twelve-year-old girl but the convictions were reversed because of the improper introduction of evidence that defendant had images of child pornography on his computer.

C. Other Prosecution Motions

Closed Preliminary Hearing. The court may close the courtroom for preliminary hearings on its own motion or at the request of the prosecutor, the accused, or the complaining witness. Va. Code Ann. §18.2–67.8. The court may allow a transcript to be made of this proceeding, Va. Code Ann. §19.2–185, but there is no case law on whether this proceeding can be videotaped for the purposes of preserving the child's testimony in case the child is unable to testify at trial. See discussion *infra*, Chapter 5, part I.B., related to closed courtroom at trial. *See also* MANUAL, Chapter 6, part III.

Motion for Admissibility of DNA Evidence. DNA profile evidence is admissible in any criminal proceeding. Va. Code Ann. §19.2–270.5. *See Spencer v. Commonwealth*, 240 Va. 78, 393 S.E.2d 609 (1990) (finding DNA print identification test scientifically reliable).

Motion to Exclude Witnesses. Minor victims and their parents or guardians "may remain in the courtroom during the trial" unless they are material witnesses. Va. Code Ann. §19.2–265.01.

Motion to Protect the Identity of the Victim. The Commonwealth's Attorney, the judge, or the defendant may move to prohibit testimony as to the address or telephone number of a victim or witness if the judge determines such information is "not material under the circumstances of the case." Va. Code Ann. §19.2–269.2.

M*otion to Amend Dates*. An indictment may be amended any time before the verdict is handed down provided the amendment does not change the nature or character of the offense charged. Va. Code Ann. §19.2–231. No case law addresses whether amending dates constitutes a change in the nature and character of the indictment. However, Virginia courts have long held that this provision is to be liberally construed, *Chiang v. Commonwealth*, 6 Va. App. 13, 365 S.E.2d 778 (1988), and prosecutors routinely amend dates as necessary. *See* MANUAL, Chapter Four, part V.B.

Motions Regarding Bail and Pre-trial Release (BACIGAL at §§10–1 through 10–5). For a discussion of bail and pre-trial release issues in child abuse cases, see MANUAL, Chapter Four, part V.G.